No. 89-7376

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

PEARLY L. WILSON,

Petitioner,

v.

RICHARD SEITER, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF AMICI CURIAE STATES OF MICHIGAN, ALASKA, ARKANSAS, CALIFORNIA, CONNECTICUT, DELAWARE, HAWAII, IDAHO, ILLINOIS, KANSAS, KENTUCKY, MISSOURI, NEW JERSEY, OREGON, PENNSYLVANIA, SOUTH CAROLINA, TENNESSEE, VIRGINIA AND THE COMMONWEALTH OF PUERTO RICO IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI

The State of Michigan and the states which have joined this Amicus Curiae brief in support of Respondents operate prison systems subject to 42 U.S.C. § 1983 actions alleging unconstitutional conditions of confinement. Many of these lawsuits are brought by inmates who proceed in forma pauperis. Defense of this litigation, much of which is meritless, absorbs considerable time and resources.

The present case involves important questions regarding the scope of the Eighth Amendment in conditions cases and the function of summary judgment as a tool for their resolution. The decision below held that Petitioner must demonstrate a material dispute concerning official obduracy and wantonness in order to justify a full trial. Affidavits or other evidence which merely placed the seriousness of the conditions or the effectiveness of remedial measures in controversy were found insufficient in this regard.

In the view of Amici the Sixth Circuit panel correctly resolved a historic anomaly in Eighth Amendment jurisprudence. Previous cases which addressed conditions claims, as opposed to individual allegations of harm attributable to specific events, had tended to ignore the state of mind element or simply collapsed it into an evaluation of severity. This case properly refocuses the inquiry on the dual elements of an Eighth Amendment violation--the nature of the deprivation and the state of mind of the causative agent.

Amici do not seek to operate inhumane correctional facilities or to purposely subject any prisoner to conditions which fall below minimal civilized standards of decency. However, they also do not believe that Eighth Amendment liability exists without fault. Where a plaintiff cannot carry a minimal burden of establishing a material dispute as to official intent, the case should not proceed to trial. Intrusive federal trials strain already limited state resources and impose additional disruption on overburdened correctional staffs. These costs are acceptable when wanton and obdurate behavior has produced the conditions at issue. They are not acceptable where the responsible state officials and agencies have made good faith efforts to maintain humane facilities.

SUMMARY OF ARGUMENT

The Court of Appeals correctly required Petitioner to demonstrate a material factual dispute as to obduracy and wantonness as a prerequisite to avoidance of summary judgment in this case. This state of mind is an element of a cause of action under the Eighth Amendment as recognized by this Court's decisions in *Rhodes v. Chapman*, 452 U.S. 337 (1981) and *Whitley v. Albers*, 475 U.S. 312 (1986). Where a defendant raises an issue in this regard

by way of motion for summary judgment, the burden properly shifts to the plaintiff to adduce sufficient evidence to require resolution by a trier of fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

Neither the complexity of the issue nor the nature of the relief sought in a particular case should control the elements of the underlying cause of action.The extent, duration or severity of conditions may bear on the question of whether a condition deprives inmates of basic human needs. These factors may also suggest the desirability of certain remedial measures. A request for prospective relief may also impact on the applicability of various immunity defenses. None of these considerations, however, should foreclose timely judicial inquiry into each element necessary for a determination of liability.

Nothing in the history of the Eighth Amendment suggests that it imposes liability without fault. Certainly, the amendment forbids the intentional infliction of pain without penological justification as evidenced by the circumstances surrounding its adoption. In cases where intent is not subject to dispute, focus on the nature of the punishment itself is appropriate. Such instances, however, do not suggest that courts may dispense with an inquiry into intent when examining challenges to prison conditions under the Eighth Amendment.

ARGUMENT

DENIAL OF A MOTION FOR SUMMARY JUDGMENT ON AN EIGHTH AMENDMENT CLAIM REQUIRES A MATERIAL DISPUTE OF FACT AS TO OBDURACY AND WANTONNESS.

By any gauge, prisoners as a group are "prolific litigants." *Cleavinger v. Saxner*, 474 U.S. 193, 211 (1985) (Rehnquist, J., dissenting). Federal civil rights filings by prisoners have steadily increased from approximately 6,600 in 1975 to nearly 26,000 in the year ending June 30, 1989. *Id.*; Administrative Office of the United States Courts, Annual Report of the Director 181, Table C-2A (1989). Although some observers contend that the "explosion" in prisoner litigation has slowed or leveled off in recent years, it is apparent that inmates produce a disproportionate amount of litigation. See J. Thomas, *Prisoner Litigation* (1988), pp 51-65, 120. See also *Higley v. Michigan Department of Corrections*, 835 F.2d 623 (6th Cir. 1987).

Many prisoner lawsuits are undoubtedly a response to unpleasant, or even harsh, circumstances or events. Inmates may well dispute whether their conditions of confinement meet professional correctional standards or state law. These grounds, however, are not a basis for federal constitutional intervention. *Rhodes v. Chapman*, 452 U.S. at 348 n. 13, *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 103 (1984). The Eighth Amendment simply does not promise a rose garden. *Atiyeh v. Capps*, 449 U.S. 1312, 1315-1316 (1981) (Rehnquist, Circuit Justice).

Even prisoner advocates acknowledge that much of this litigation is frivolous from a constitutional

perspective.[1] Patently baseless or absurd claims are subject to dismissal under 28 U.S.C. § 1915(d). *Neitzke v. Williams*, 490 U.S.___; 109 S.Ct. 1827 (1989). Complaints based on arguable legal theories may be dismissed under Fed. R. Civ. P. 12(b)(6) where it is apparent that no set of provable facts consistent with the allegations would entitle the pleader to relief.[2] Finally, courts possess only limited authority to place restrictions on the few recreational litigators who have demonstrably abused in forma pauperis status. See *Gelabert v. Lynaugh*, 894 F.2d 746, 747 (5th Cir. 1990) (citing *In Re McDonald*, 489 U.S. 180 (1989)); *Abdul-Akbar v. Watson*, 901 F.2d 329 (3rd Cir. 1990) (reversed denial of in forma pauperis status to prisoner who had filed forty § 1983 claims in seven years).

In this context, the role of summary judgment pursuant to Fed. R. Civ. P. 56 assumes critical importance. The "New Era"[3] of summary judgment recently launched by this Court requires that plaintiffs affirmatively present "evidence on which the jury could reasonably find for the plaintiff" to defeat amotion which challenges the factual basis of their claims. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-252 (1986); *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In this regard, the moving party may not rest on the general or

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1. Gursky, *Who Are These People and Why Are They Suing You?--A Look at the ALCU's National Prison Project*, Corrections Today, June, 1989, at 16, 22.

2. Notice pleading, liberal construction of pro se complaints, *Haines v. Kerner*, 404 U.S. 519, 520-521 (1972), and generous allowance of amendments pursuant to Fed. R. Civ. P. 15 may affect the efficacy of these procedures.

3. A thorough analysis of the change in summary judgment practice is found in *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1476-1481 (6th Cir. 1989).

conclusory allegations of the pleadings. *Lujan v. National Wildlife Federation*, 497 U.S. ___; 110 S.Ct. 3177, 3188-3189 (1990). Of particular importance to the present case is the notion that courts may appropriately resolve state of mind issues on summary judgment. *Street*, 886 F.2d at 1479; *Anderson*, 477 U.S. at 256-257.

The propriety of disposition by summary judgment in a given conditions of confinement case necessarily depends on the factual record before the court. Where, as Amici argue herein, intent is an element of the cause of action, plaintiff must adduce sufficient relevant evidence to create an actual, as opposed to theoretical, dispute. In this regard, Amici recognize that the function of summary judgment is to identify factual issues and not to resolve them. However, in an evaluation of defendant's entitlement to summary judgment, there is no sound basis for a distinction between state of mind and conduct.[4]/

4. "[C]ourts, applying the summary judgment rule to state of mind issues in the same way that they would apply the rule to any factual matter, have decided quite correctly that when no factual dispute exists, summary judgment is appropriate." Sonenshein, *State of Mind and Credibility in the Summary Judgment Context: A Better Approach*, 78 NW. U. L. Rev. 774, 794 (1983).

A. THE ELEMENTS OF AN EIGHTH AMENDMENT CAUSE OF ACTION SHOULD NOT DEPEND ON THE CHARACTERIZATION OF THE ALLEGED VIOLATION.

Modern prisons present complex and intractable problems. *Procunier v. Martinez*, 416 U.S. 396, 404-405 (1974). Problems require solutions. Officials responsible for the operation of correctional facilities consequently make numerous decisions on a regular basis which, individually or collectively, affect the lives of both prisoners and employees. Some choices take the form of dramatic action in the face of explosive confrontations. Others deal with the most mundane aspects of everyday existence. All involve some degree of expertise and reflection. Competing priorities, time pressures and resource availability frequently complicate the decisional process.

The results of these decisions have been the subject of judicial scrutiny since this Court's decision in *Cooper v. Pate*, 378 U.S. 546 (1964). It is doubtful that many prison officials today act without some awareness of possible court intervention or review. If anything, it is more likely that many correctional decisions anticipate such review and seek to avoid it through conformity with the guidance offered by applicable case law.

As with most litigation, review of official discretion in the context of corrections is typically retrospective. This evaluation may occur years after the fact in a wholly different societal and legal environment. Only the most prescient administrator can accurately predict both the results of a particular decision and the precise legal standard by which a court might judge it.

This Court has long recognized the difficulties inherent in correctional decision making and the

limitations of hindsight judicial intervention. *Bell v. Wolfish*, 441 U.S. 520, 554-555 (1979) (citing *Jones v. North Carolina Prisoners' Labor Union*, 433 U.S. 119, 132 (1977)). The principles of judicial restraint, separation of powers and, in the case of state prisons, federalism all counsel deference to executive discretion in this regard. As stated in *Turner v. Safley*, 482 U.S. 78, 84-85 (1987):

> "Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. Prison administration is, moreover, a task that has been committed to the responsibility of those branches, and separation of powers concerns counsel a policy of judicial restraint. Where a state penal system is involved, federal courts have ... additional reason to accord deference to the appropriate prison authorities."

The present case involves allegations of substandard environmental conditions incident to confinement which Petitioner contends inflict "unnecessary and wanton" (*Rhodes*, 452 U.S. at 346) pain in violation of the Eighth Amendment. There is no claim that the state or its agents deliberately created the disputed conditions as punishment. And, as the Sixth Circuit found, Petitioner failed to counter Respondents' evidence of efforts to provide minimally decent confinement conditions. J. A. 72-73.

The position of Amici is that this litigation and similar so-called "conditions" cases are fundamentally the same as any other Eighth Amendment cause of action. There must be some departure from the "evolving standards of decency that mark the progress of a maturing society", *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion); *Penry v. Lynaugh*, ___ U.S. ___; 109 S.Ct. 2934, 2953

(1989); which inflicts pain (harm), *Hutto v. Finney*, 437 U.S. 678 (1978) (denial of basic human needs). This deviation must be shown to have resulted from a culpable state of mind. For example, compare *Santiago v. Lane*, 894 F.2d 218, 221 (7th Cir. 1990) (equating deliberate indifference with criminal recklessness) and *Berry v. City of Muskogee*, 900 F.2d 1489, 1494-1496 (10th Cir. 1990) (gross negligence insufficient for Eighth Amendment claim).[5] To hold otherwise effectively imposes strict liability without fault.

Amici recognize that analysis of causation and intent issues presents difficulties in "conditions" cases. When medical personnel ignore unmistakable signs of a serious illness or where a guard beats an inmate, resolution of these questions ordinarily will pose no difficulty. But if the claim is that prisoners are at risk due to an unresponsive health care system or poorly trained guards, the answers are likely to be less obvious. The complexity of the inquiry, however, is no reason to dispense with the requirement. Courts are particularly suited to untangling intricate liability questions. And, given the deferential considerations previously mentioned, the states have a strong interest in a definitive liability determination prior to imposition of intrusive remedial measures.

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5. Respondents' Brief sets forth the appropriate standard in this case.

B. THE TEXT OF THE AMENDMENT, ITS HISTORIC ORIGINS AND ITS APPLICATION IN OTHER CONTEXTS SUPPORTS A CONCLUSION THAT STATE OF MIND IS A RELEVANT ELEMENT.

The United States argues that the intent of the Framers of the Bill of Rights and this Court's sentencing jurisprudence supports a conclusion that not all Eighth Amendment violations include a state of mind element. Brief for United States as Amicus Curiae, pp. 14-18. From this premise it is reasoned that conditions alone, at least the severe and pervasive variety, can constitute cruel and unusual punishment.

The origin of the Eighth Amendment has been discussed in a number of cases. The provision was "based directly on Art I, § 9, of the Virginia Declaration of Rights," which "adopted verbatim the language of the English Bill of Rights." *Solem v. Helm*, 463 U.S. 277, 285, n 10 (1983). The English version was intended to curb the excesses of English judges under the reign of James II. *Ingraham v. Wright*, 430 U.S. 651, 664 (1977). It received very little debate in Congress. *Weems v. United States*, 217 U.S. 349, 368-369 (1910). Ratification debates suggest that the primary concern of the draftsman involved proscriptions of "tortures" and other "barbarous" methods of punishment. *Gregg v. Georgia*, 428 U.S. 153, 170 n. 17 (1976).[6]

6. At the beginning of this century, whether whipping was constitutional was subject to debate. Note, *What is Cruel and Unusual Punishment*, 24 Harv. L. Rev. 54, 56 (1910).

Review of the history has led this Court to conclude that the amendment "... embraces, at a minimum, those modes or acts of punishment that had been considered cruel and unusual at the time that the Bill of Rights was adopted." *Ford v. Wainwright*, 477 U.S. 399, 405 (1986). The Court has further found a clear intent on the part of the Framers to place limits on the powers of the new government with a primary focus on the potential for abuse of its prosecutorial power. *Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. ___; 109 S.Ct. 2909, 2915 (1989). Aside from these general observations, however, it is difficult to discern the actual intent of the Framers. See Wefing, *Cruel and Unusual Punishment*, 20 Seton Hall L. Rev. 478, 482 (1990).

Sentencing cases provide little additional guidance. In such instances, there is no question that the state intends to impose the particular penalty at issue. Deliberative action by a legislative body defines an offense and proscribes the mode or extent of punishment. The prosecutor, as executive, exercises discretion to invoke the statute against a specific person. And, finally, the judicial process imposes the penalty after formal deliberation in accordance with due process of law. There is simply no issue as to intent in such circumstances.[7]

The absence of an issue does not necessarily suggest the absence of an element. Intent may not be an issue on review of the legislative prerogative related to

7. The cases cited by the United States at 18-19 of their brief support this conclusion. In *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 462 (1947), there was simply no claim that the officials were doing anything other than trying to carry out a lawfully imposed death sentence. *Robinson v. California*, 320 U.S. 660 (1962), involved a legislative enactment which criminalized addictive status.

imposition of a particular penalty. This, however, does not foreclose intent as an element of a cause of action where volitional conduct is alleged to have violated the Eighth Amendment.

C. FACTORS PERTINENT TO A DETERMINATION OF AN EIGHTH AMENDMENT VIOLATION MAY BE RELEVANT TO BOTH INTENT AND HARM.

The parties in this case dispute whether the conditions at issue "deprive inmates of the minimal civilized measure of life's necessities." *Rhodes*, 452 U.S. at 347. Some of the types of deprivations alleged by Petitioner are within the range of conditions (sanitation, food, shelter) that have been subjected to Eighth Amendment scrutiny by some circuits.[8/] Commonality, however, is not equivalence. The duration, extent and severity of any given condition must be considered in determining whether the condition denies basic human needs.

The well known conditions of confinement cases commenced in the wake of *Cooper v. Pate* involved older facilities with many serious structural and administrative problems. In early landmark litigation, the prisons at

8. The Sixth Circuit below analyzed each discrete condition separately in context in accord with the test adopted in *Walker v. Johnson*, 771 F.2d 920, 925 (6th Cir. 1985). Other jurisdictions employ somewhat different formulations in conditions cases. Compare *Hoptowit v. Ray*, 682 F.2d 1237, 1246-1247 (9th Cir. 1982) (focus on specific condition) with *Wellman v. Faulkner*, 715 F.2d 269 (7th Cir. 1983) ("totality of conditions"). See also: Annot., 85 A.L.R. Fed. 750 (1987).

issue were described as "a dark and evil world completely alien to the free world." *Holt v. Sarver*, 309 F.Supp. 362, 381 (E.D. Ark. 1970) (Holt II) quoted in *Hutto v. Finney*, 437 U.S. 678, 681 (1978).[9/] Such extremely deplorable conditions were not atypical. *Pugh v. Locke*, 406 F.Supp. 318, 323-324 (M.D. Ala. 1976) *aff'd as modified*, 559 F.2d 283 (5th Cir. 1977), *rev'd in part*, 438 U.S. 781 (1978) (facilities wholly unfit for human habitation); *Ramos v. Lamm*, 485 F.Supp. 122, 134 (D. Colo. 1979), *aff'd in part and vacated and remanded in part on other grounds*, 639 F.2d 559 (10th Cir.1980), *cert denied*, 450 U.S. 1041 (1981) (same).

Where conditions reached the level of "soul chilling inhumanity", *Inmates of Suffolk County Jail v. Eisenstadt*, 360 F.Supp. 676, 684 (D. Mass. 1973) quoted in *Rhodes*, 452 U.S. at 354 (Brennan, dissenting), there was simply no issue of intent. The failure to raise an issue of intent in such extreme cases, however, does not mean that intent can never be an issue in any conditions case.

The United States argues that state of mind is simply "irrelevant" whenever general continuing conditions of confinement are adequately alleged. In short, once the condition is established to fall below minimum standards, liability follows. This argument rests on several questionable premises.

9. Not surprisingly, the defendants in *Hutto* did not dispute liability. *Rhodes*, 452 U.S. at 345 n. 11. Concessions of liability or token defenses were not uncommon as corrections officials, according to commentators, utilized the courts as alternative funding mechanisms. See Eastman, *The Triumph of the Prison: The True Limits of Prison Reform Litigation*, 20 U. Tol. L. Rev. 69, 96-97 (1988). The trial in *Pugh* concluded with an open court admission by defendant's lead counsel that the evidence, which was largely stipulated, "conclusively established aggravated and existing violations of plaintiff's Eighth Amendment rights." 406 F. Supp. at 322.

This Court's cases which discuss Eighth Amendment standards in a prison context do not distinguish conditions cases from other types of actions with respect to state of mind requirements. *Rhodes* refers to "wanton and unnecessary infliction of pain", 452 U.S. at 347. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976), spoke in terms of "deliberate indifference". Finally, *Whitley v. Albers*, 475 U.S. 312, 319 (1986), unequivocally stated that:

> "It is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause, whether that conduct occurs in connection with establishing conditions of confinement, supplying medical needs, or restoring official control over a tumultuous cellblock." [Emphasis added].

A contrast between general conditions which affect a group of prisoners and specific circumstances directed at individual inmates is a distinction without a difference. An environmental condition such as cold temperatures may affect a single cell, a cell block or an entire institution. For purposes of constitutional analysis, the number of individuals subject to the alleged violation should not determine the applicable standard.

The extent of an alleged violation also does not alter its basic character. A single inmate may receive substandard treatment from one member of a medical care staff. The incident might be merely an isolated event attributable to individual deficiencies or it might be an example of systemic problems such as staff shortages, or possibly a blend of both. In any event, the fundamental nature of the violation remains the same.

The facts of *LaFaut v. Smith*, 834 F.2d 389 (4th Cir. 1987), illustrates the conceptual difficulty of distinguishing systemic problems from individual denials. In *LaFaut*, a wheelchair bound paraplegic claimed that officials denied

him adequate toilet facilities and necessary physical therapy. Such treatment may have been directed at LaFaut personally by those directly responsible for his care. On another level, however, the allegations might reflect a general official indifference to the plight of handicapped prisoners. The Fourth Circuit Court of Appeals recognized that the treatment received by LaFaut could be characterized as " ... inhumane conditions of confinement, failure to attend to his medical needs, or a combination of both. ... " 834 F.2d at 391-392.[10]

The attempt to confine intent as an element to transitory or isolated incidents is also unsound. Such an approach relies on labeling as a substitute for analysis. Duration may have some relevance to the determination of whether a condition deprives inmates of basic human needs. However, the mere fact that a condition may persist over time is not dispositive of state of mind.

Lopez v. Robinson, 914 F.2d 486 (4th Cir. 1990), represents an example of these considerations. In *Lopez*, lightning struck electrical lines which supplied power to prison water pumps. Water levels fell below amounts necessary for fire suppression. As a result, the warden shut off water supplies to the cells for a 24-hour period. These circumstances clearly required the exercise of judgment to balance basic sanitation and safety concerns. The court assumed that the shut-off implicated rights to basic human needs, but found no violation in the absence of culpable conduct as a causative factor. Ignoring the state of mind shown by the warden's good faith efforts to address the problem and focusing solely on the duration

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10. The court chose to apply the "deliberate indifference" definition from *Estelle* rather than the heightened "malicious and sadistic" definition adopted by *Whitley*.

of the deprivation of water is contrary to the historical focus of the Eighth Amendment.

As the *Lopez* example suggests, prisons are dynamic rather than static institutions which are subject to a variety of influences. Serious conditions may "continue" as the result of intentional choices, benign neglect, errors in judgment or malicious intent. Efforts to address nonepisodic conditions may prove ineffectual for a variety of reasons. An application of a state of mind requirement in such circumstances may mean that there is no federal court redress under the Eighth Amendment. However, such result is fundamentally no different from the denial of relief for an actual injury as occurred in *Whitley*.

D. STATE OF MIND REQUIREMENTS SHOULD NOT DEPEND ON THE RELIEF SOUGHT.

Petitioner and supporting Amici claim that a state of mind requirement for continuing Eighth Amendment violations would frustrate the exception to the Eleventh Amendment immunity permitting official capacity suits for prospective injunctive relief. *Ex Parte Young*, 209 U.S. 123 (1908); *Edelman v. Jordan*, 415 U.S. 651 (1974).

The apparent premise of this argument is that "systemic deprivations" usually develop slowly over time and result from a web of policy choices primarily related to resource allocation. See Brief of United States, at 13, 18-19. It further assumes that the conduct of officials currently responsible for the operation of the penal facility at issue did not necessarily produce the deficient condition and their state of mind, therefore, is irrelevant.

The simplistic nature of this argument tends to gloss over some important concepts. The only reason that plaintiffs can maintain official capacity actions for

injunctive relief is due to the *Ex Parte Young* fiction which effectively permits suits against the state despite the stricture of the Eleventh Amendment. *Will v. Michigan Department of State Police*, ___ U.S. ___; 109 S.Ct. 2304, 2311 (1989). The prospective relief, however, remedies continuing violations not past wrongs. *Edelman v. Jordan*, 415 U.S. 651 (1974); *Pennhurst*, 465 U.S. at 103. As summarized by Justice Brennan's dissent in *Green v. Mansour*, 474 U.S. 64, 77 (1985):

> "If relief is sought against continuing violations, the Court finds that the Supremacy Clause outweighs the Eleventh Amendment; but if relief is requested against past violations, the Court determines that the Eleventh Amendment outweighs the Supremacy Clause."

Thus, whatever the historical origins of the conditions at issue, the relevant official conduct in an Eighth Amendment injunctive case is that which continues to subject the prisoners to the alleged deprivation.

The United States recognizes that past behavior, in any event, may have been merely negligent or even simply poor judgment. One could even trace the origins of some conditions to very remote, arguably neutral factors.[11] The current explosion of prison populations, see *Tillery v. Owens*, 907 F.2d 418 (3rd Cir. 1990), is perhaps attributable partly to the movement to determinative sentences, stricter enforcement of various crimes or simply

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11. *Powell v. Lennon*, 914 F.2d 1459 (11th Cir. 1990), illustrates the limited relevance of past causative factors in an injunctive case. The court in *Powell* reversed a dismissal of a § 1983 action which claimed that defendants had forced the plaintiff to live in a dormitory contaminated with friable asbestos. The court found that the complaint stated a claim even if the initial conduct in ordering inadequate asbestos removal was merely negligent. Though not discussed by the Court, the obvious original cause for the condition was the initial decision to install asbestos.

a surge in criminal behavior.[12] The search for an ultimate cause is not the proper focus of an Eighth Amendment action in which present conduct is at issue.

The immediate or proximate cause of the alleged violation was the crucial factor in *Cody v. Hillard*, 830 F.2d 912 (8th Cir. 1987) (en banc), *cert denied*, 485 U.S. 906 (1988). There the court reversed a panel decision which had upheld injunctive relief based on a finding that double celling was unconstitutional. The court's opinion emphasized that the plaintiffs had failed to demonstrate a causal connection between the use of double celling and the alleged harmful conditions. Though not dispositive, *Cody* also stressed that administrators had taken "sincere efforts" to maintain a healthful environment.

As in *Cody*, the perceived need to correct undesirable conditions cannot be allowed to dispense with the legal prerequisites for a finding of constitutional liability. Prison reform is an executive and legislative responsibility whereas the function of a court is to determine whether a constitutional violation has occurred. *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (1982). However noble the goal, courts should refrain from intervention unless all the elements of proof are present.[13] Judges, as the court in

12. Overcrowding has been part of American penology since the nation turned to incarceration as its primary criminal penalty according to one commentator. Pillsbury, *Understanding Penal Reform: The Dynamic of Change*, 80 J. Crim. L. & Criminology 726, 772 (1989). Recent expenditure indicates that States have responded affirmatively to current population pressures. See *Survey: Prison Construction Booms in U.S.-- Up 73 Percent*, 14 Corrections Compendium, Sept Oct, 1989, at 10.

13. As some commentators suggest, federal court remedies do not always produce positive results. See Engle and Rothman, *The Paradox of Prison Reform: Rehabilitation, Prisoner's Rights and Violence*, 7 Harvard J. L. and Pub. Pol'y., 413, 430-433 (1987); Ekland-Olson, *Crowding, Social Control and Prison Violence: Evidence from the Post-Ruiz Years in Texas*, 20 Law & Soc'y Rev. 389 (1986).

Inmates of Occuquan v. Berry, 844 F.2d 828, 844 (D.C. Cir. 1988), cautioned, should:

> " ... not be quick to presume that the two other branches will cavalierly succumb to engaging in what the lower courts have been, at times, rather quick to condemn as systemic constitutional violations." [Emphasis in original].

A state of mind requirement, despite implicit arguments to the contrary, would not necessarily allow administrators to escape liability simply by asserting a lack of resources. There is some authority for the proposition that budgetary constraints may entitle individual defendants to qualified immunity in Eighth Amendment damage actions. See *Birrell v. Brown*, 867 F.2d 956 (6th Cir. 1989), citing *Youngberg v. Romeo*, 457 U.S. 307, 323 (1982). *Birrell*, however, noted that lack of funds does not excuse constitutional violations or bar prospective remedies. *Id.* at 959 (citing *Williams v. Edwards*, 547 F.2d 1206, 1213 (5th Cir. 1977) (lack of funds or authority over funds does not justify operation of a prison in an unconstitutional manner)). The existence *vel non* of this defense is separate from whether obduracy and wantonness is an element of a cause of action. The latter is concerned with the conduct and behavior of the responsible officials in addressing the conditions at hand and, as noted, not with the precedent initial cause.

For the above reasons, Amici contend that the element of intent should not depend on the nature of the relief sought. If officials have addressed current conditions in good faith, federal courts should not intervene with intrusive remedies. To do so effectively substitutes judicial judgment as to the most efficacious manner of proceeding with prison management.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

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